



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Mayor

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Board of Aldermen Action Date:	To be determined
90-Day Expiration Date:	To be determined

DATE: June 5, 2009

TO: Ald. Brian E. Yates, Chairman, and
Members of the Zoning and Planning Committee

FROM: Michael Kruse, Director of Planning and Development
Stephen Gartrell, Associate Director, Community Development
Jennifer Molinsky, Principal Planner/ Zoning and Planning Coordinator *JM*

SUBJECT: **PUBLIC HEARING**
Petition #303-07 ALD. JOHNSON, ALBRIGHT, HESS-MAHAN, LINSKY, and SANGIOLO proposing to amend Chapter 30-24(f) to revise provisions requiring inclusion of low-income housing units in certain residential developments, by so doing encourage multi-family developers to seek approval under Newton zoning rather than under Chapter 40B.

CC: Board of Aldermen
Planning and Development Board
Mayor David B. Cohen
John Lojek, Commissioner of Inspectional Services
Marie Lawlor, Assistant City Solicitor
Phil Herr, Chair, Newton Housing Partnership

RECOMMENDATION: *The Planning Department supports the adoption of all proposed changes.*

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

Newton's Inclusionary Zoning rules are set out in Sec. 30-24(f) of the City's Zoning Ordinance. They require that, in developments resulting in three or more units of new housing, 15% of the units must be permanently affordable for households below specified income levels. **Petition #303-07** recommends amendments to these rules, with the intention that they would result in more flexibility in the funding of affordable housing in the City. The petition also proposes an incentive to encourage developers of new residential projects to submit applications under the special permit process (*with Board of Aldermen decision-making*) rather than the Comprehensive Permit (Chapter "40B") process (*with Zoning Board of Appeals decision-making*). Finally, petition #303-07 proposes a number of amendments to clarify and update the Inclusionary Zoning provisions (*SEE ATTACHMENT "A"*).

I. EXISTING INCLUSIONARY ZONING

Newton's Inclusionary Zoning rules are intended to increase the supply of affordable housing throughout the City. The rules, set out in Sec. 30-24(f) of the City's Zoning Ordinance, require that, where a special permit is necessary for a development that would result in three or more new dwelling units, 15% of the units must be deemed "Inclusionary Units," rented or sold to eligible households (*for rental housing, households earning less than 80% of area median income, and for sale housing, households earning less than 120% of area median income*). Sec. 30-24(f) also includes provisions describing how developers of projects of six or fewer units may make a cash payment-in-lieu of designating Inclusionary Units in a development, conditions for building affordable units off-site rather than integrated into a development, design and construction standards for Inclusionary Units, covenants and marketing, and other issues. The full text of Sec. 30-24(f) is presented in an attachment to this report in a side-by-side comparison with the amendments proposed in petition #303-07 (*SEE ATTACHMENT "B"*).

II. PROPOSED AMENDMENTS

Petition #303-07 proposes eight amendments to the current Inclusionary Zoning provisions. ***The first three amendments involve substantive changes to the ordinance:*** 1) expanding the option for developers to pay a fee in lieu of building actual units and revising the formula for determining the fee; 2) providing incentives to developers to exceed the mandated amount of inclusionary housing; and 3) updating marketing and tenant selection practices. ***The remaining five changes are primarily intended to streamline and clarify the existing zoning, though some minor substantive changes are also proposed, including:*** 4) clarifying the calculation of prices at which Inclusionary Units are to be sold; 5) clarifying the flexibility in sales prices at which Inclusionary Units may be sold; 6) assuring that units developed under the ordinance count toward the City's Chapter 40B requirement; 7) clarifying whether rehabilitation of existing units contributes toward Inclusionary Zoning requirements; and 8) restoring paragraphs inadvertently omitted by the most recent amendments to the section. These items are discussed below. ***Please refer to Attachment B for a side-by-side comparison of the existing Inclusionary Zoning and the changes proposed by petition #303-07.***

1. CASH-IN-LIEU OF UNITS

Description

Under Sec. 30-15(f)(4), Newton's current Inclusionary Zoning allows developers of *six or fewer housing units* to pay a cash fee to the City in lieu of building and setting aside some of their units as Inclusionary Units. Larger developments currently do not have this option; Inclusionary Units *must* be provided on site, where they are to be integrated with market-rate units.¹ The proposed amendment would remove the six-unit limit, allowing developments of any size to contribute cash-in-lieu of building Inclusionary Units (affordable units) on site, though for developments over six units, the Board of Alderman would have to approve the fee option as part of a special permit petition.

In approving fee-in-lieu of units for developments over six units, the Board of Alderman would have to make findings that there would be "an unusual net benefit to achieving the City's housing objectives." The Board would consider several factors related to the appropriateness of a development site for affordable housing, including the disparity in prices between the market rate and affordable units, and location, including access to public transportation, schools, and other services. The Board would also examine the level of uncommitted money in the fund established for the collection of cash-in-lieu payments (described below). As under current Inclusionary Zoning rules, developments of six or fewer units would not need special Board of Alderman approval to pay cash-in-lieu of building units on site.

Specifically, the petition proposes deleting existing **Sec. 30-24(f)(4)** and replacing it with the following:

Sec. 30-24(f)(4)a Eligibility. The Inclusionary Unit requirements of Sec. 30-24(f)(3) may, if proposed by the applicant in its special permit application, alternatively be met through payment of a Fee In Lieu of providing those Inclusionary Units. Such request shall be approved only if the development (a) contains no more than six dwelling units or (b) the Board of Aldermen, in acting upon the special permit for the development, make specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a fee rather than Inclusionary Units. The findings shall include consideration of how wide the disparity would be in unit size and price between on-site market-rate and affordable units, the appropriateness of the development site location for income-eligible households regarding proximity to and quality of public transportation, schools, and other services; and the level of uncommitted funds in the Receipts Reserved for Appropriation Fund.

The petition would also amend the formula by which a cash payment is calculated, and the new formula would apply to developments of any size, whether at, under or over six

¹ There is one exception for developments over six units: as set out in Sec. 30-15(f)(5), Inclusionary Units may, with the approval of the Board of Alderman, be constructed or rehabilitated offsite when the developer is working in partnership with a non-profit housing development organization.

units. The current cash payment, applicable to developments of six or fewer units, is set at three percent of the sales price of each unit or, for rental housing, three percent of the assessed value of each unit. The petition proposes a fee equal to 12% of the sales price at closing of each market rate unit (as verified by the Planning Director), or, if rental housing, 12% of the estimated assessed value of each unit (as determined by the City Assessor), *for all units over the first two in a development.*

The proposed text relating to the fee amount formula is as follows:

Sec. 30-24(f)(4)b) Fee amount. The first two units in a development granted a Certificate of Occupancy shall require no Fee In Lieu. For each remaining unit in the development the Fee In Lieu shall be equal to 12 percent of the sales price at closing of each unit as verified by the planning and development department or, if rental housing, the cash payment shall be equal to 12 percent of the estimated assessed value of each unit as determined by the City assessor.

Currently, the Inclusionary Zoning Ordinance does not name a specific fund to which monies collected for fee-in-lieu payments shall be made. This petition would establish a "Receipts Reserved for Appropriation Fund" to which cash payments would be made and through which they would be distributed equally to the Newton Housing Authority and Planning and Development Department, for construction, purchase, or rehabilitation of housing for eligible households (as under current zoning provisions). Finally, while current zoning requires that the Comptroller annually review payments to the fund, the petition proposes that this responsibility be given to the Housing Authority and Planning Department, and that these departments report annually to the Board of Aldermen on the use of the funds.

The text relating to the fee recipient is as follows:

Sec. 30-24(f)(4)c) Fee recipient. The fee payment shall be made to a Receipts Reserved for Appropriation fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for Eligible Households. The Authority and the department shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the board of aldermen on the use of the proceeds for the purposes stated herein.

Analysis and Recommendation

In general, the Planning Department believes that integrating affordable units with market rate units in new, mixed-income developments is preferable to separating affordable units and locating them elsewhere. Integrating units in a development can help ensure that affordable housing is spread throughout the City, consistent with the goal of providing a diversity of housing options to low, moderate, and middle income families across the City's neighborhoods. *(The rationale for allowing cash-in-lieu fees for small developers, as allowed by current zoning, is that the burden of providing on-site units in small developments would be a disincentive to these units being built at all.)*

However, the City's housing objectives may sometimes be better served if, rather than integrate affordable units with market rate units, a developer could provide funds that the City could use to purchase units off-site. In the case of very large developments, such as Kessler Woods, Inclusionary Units are concentrated in one location rather than distributed around the City. Affordable housing may also be inappropriate in certain locations if not convenient to transit or other services. Additionally, the Newton Housing Authority has found that, for low-income tenants, it can be difficult to manage very high end units, which are more expensive to maintain, and they would prefer finding units off-site.

Indeed, before the most recent amendments to the Inclusionary Zoning Ordinance were enacted in 2002, a form of fee-in-lieu of units was allowed, and two high end developments (the Terraces and the Residences at Chestnut Hill) with extremely large units (approximately 4,000 sq. ft.) were allowed to make payments of nearly \$3 million each (substantially less than would be provided under the proposed ordinance) on the recommendation of the Newton Housing Authority. There were difficulties with the "old" fee-in-lieu structure that the current petition aims to address, including making the fee structure clear and easy to calculate.

Given that providing affordable units on-site is *generally* preferable, it is important that the fee option not provide too great an incentive for developers that they may always seek approval making a cash payment. *Table 1 uses the example of a large development of 62 condominium units* to compare the proposed fee with providing units on-site. If Inclusionary Units were provided on-site, the developer would need to designate nine units (15% of 62), two-thirds of which would have to be affordable to households at 80% of area median income (AMI) and one-third of which would have to be affordable to households at or under 120% AMI. To the developer, the sales income foregone by selling these Inclusionary Units would be equal to nearly \$3 million. Currently, there is no fee-in-lieu option for a development of this size. Under the proposed fee-in-lieu plan (12% of the sales price of all units excluding two), the developer would pay over \$6 million. In this case, from the developer's perspective, the fee in lieu option is significantly more costly than the expense of providing Inclusionary Units on site. However, another perspective is that paying a fee rather than providing Inclusionary Units on-site simplifies the marketing of high-end units and takes the developer out of the affirmative marketing and tenant selection process; and, from the City's perspective, if there is already ample affordable housing in the area or if the location is not convenient to public transportation and support services, other sites may better serve the objectives of the *Newton Comprehensive Plan* for creating a diversity of housing City-wide.

Under the proposed zoning, the Board of Aldermen would consider these factors, as well as the "the level of uncommitted funds in the Receipts Reserved for Appropriation Fund," when it makes a determination about fee-in-lieu of Inclusionary Units. If the

fund is growing too much and not being spent, it may indicate that finding units in the marketplace (off-site) is too difficult, and that on-site units would be preferable.

Table 1: Large Project Example

Number of units	62
Option 1: Building Inclusionary Units on Site	
Required number of Inclusionary Units if provided on site	9
Market price per unit	\$875,000
Affordable price if Inclusionary Units provided on site (80% AMI)	\$138,000
Affordable price if Inclusionary Units provided on site (120% AMI)	\$285,700
Total sales if units provided on site	\$47,853,770
Amount of sales foregone by building Inclusionary Units	(\$6,189,900)
Option 2: Cash-in-Lieu of Units	
Proposed fee-in-lieu calculation (12% of sales price after first two units)	(\$6,300,000)

Projects with six or fewer units currently have the option to pay cash in lieu of building Inclusionary Units, but as the fee calculation would change under petition #303-07, it is important to look at the potential effect on smaller projects as well. *The example set out in Table 2 examines a six-unit development.* If building Inclusionary Units on-site, the developer would have to provide one unit which, in this example, would lead to foregone sales income of \$737,000. Under the current fee-in-lieu calculation, that developer could instead build all market rate units and pay a fee equal to three percent of the sales price of the units, calculated here as \$157,000. Under petition #303-07, this fee would rise to \$420,000. In this example, although the fee would rise under the petition, the fee option remains less costly to the developer than providing an Inclusionary Unit.

Table 2: Small Project Example

Number of units	6
Option 1: Building Inclusionary Units on Site	
Required number of Inclusionary Units if provided on site	1
Market price per unit	\$875,000
Affordable price if Inclusionary Unit provided on site (80% AMI)	\$138,000
Total sales if units provided on site	\$4,586,700
Amount of sales foregone by building Inclusionary Units	(\$737,000)
Option 2: Cash-in-Lieu of Units	
Current fee-in-lieu calculation (3% of sales price)	(\$157,500)
Proposed fee-in-lieu calculation (12% of sales price after first two units)	(\$420,000)

As noted above, the proposed fee calculation is 12% of sales prices, exempting the first two units. From a developers' perspective, the smaller the project, the more important this two-unit exemption is in reducing the fee that would be paid in lieu of providing Inclusionary Units.

The above examples look at the proposed changes to the fee-in-lieu provisions from the developer's perspective. It is more difficult to quantify the benefit to the City, which must assess the value of receiving an on-site Inclusionary Unit with receiving a fee to acquire land and develop a unit off-site. Since this decision depends on the characteristics of specific proposed projects, the criteria for determining whether a fee is appropriate should help guide the process. Additionally, since the Board of Aldermen must approve the fee-in-lieu option (as part of the special permit process), taking into account the specifics of an application and the level of funding available to use elsewhere in the City at the time of the application, its use will be closely monitored and tied both to the specifics of proposed developments and to affordable housing needs elsewhere in the City.

Overall, the petition may result in more affordable housing because, in large developments, if a developer opts to pay a fee and the Board allows it as part of a special permit, there should be enough funds to create affordable housing elsewhere in the City; currently, the funds collected from fee-in-lieu payments made by small developers are so small it is difficult to use them to create (buy) affordable units off-site.

The Planning Department recommends adoption of the proposed fee-in-lieu option for developments larger than six units and of the proposed new fee calculation and fee recipient. In our opinion, the proposed fee structure does not create too large an incentive for developers of large projects to always seek the cash-in-lieu option, but does allow its use, if approved by the Board of Aldermen in making findings that it will benefit the City of Newton and further its housing objectives.

2. INCENTIVES FOR EXCEEDING MINIMUM INCLUSIONARY HOUSING REQUIREMENTS

Description

The current Inclusionary Zoning Ordinance does not offer incentives for developers to exceed minimum Inclusionary Unit requirements. A density bonus, expedited review, or other incentive might encourage developers who are interested in providing affordable housing to build additional Inclusionary Units, and to do so through the special permit process in zoning, rather than through the Comprehensive Permit process (through the City's Zoning Board of Appeals).

In the past decade, the City's stock of affordable housing as counted by the Commonwealth of Massachusetts grew by almost 1,300 units, but only about 30 of those units were developed through the Inclusionary Zoning provisions; the majority were permitted and built rest came through the Comprehensive Permit process, which allow developers to submit applications for affordable housing developments that override local zoning to the Zoning Board of Appeals (ZBA) rather than the Board of Alderman and to appeal any denial (or approval granted with conditions which would make building "uneconomic") to the state Housing Appeals Committee. Communities such as Newton, where less than 10% of the housing stock is considered "affordable" to low- and moderate-income households have a strong burden of proof in Chapter 40B appeal cases. Because the Board of Alderman have less control over the

outcomes of Comprehensive Permit proposals, it is generally preferable from the City's perspective that developers of affordable housing build under the Inclusionary Zoning special permit process, where site plans and specific project features can be negotiated in ways that provide benefit to the community.

Petition #303-07, therefore, seeks to provide a limited density bonus for those who seek to build under the Inclusionary Zoning provisions rather than Chapter 40B. The bonus would be equal to one unit (market rate or affordable) for each additional Inclusionary Unit, up to a limit where lot area per dwelling unit is decreased by 25%; building lot coverage may also be increased by 25% and open space decreased by 25% to accommodate the bonus units. In approving a special permit, the Board of Alderman must find that the additional units do not stress services in the neighborhood or create a development that is out of context with neighborhood character. This petition would also offer an expedited review process for projects where the percentage of Inclusionary Units exceeds 30% of the total, to take the form of scheduling priority and concurrent (rather than sequential) agency reviews.

Specifically, the petition would amend Zoning Sec. 30-24(f) by inserting the following new subsection:

Sec. 30-25(f)(16) *Incentives.*

- a) *Density.* A density bonus shall be granted equal to one unit for each additional Inclusionary Unit provided above the number required by Sec. 31-24(f)(3) Inclusionary Units, up to a limit where lot area per dwelling unit is decreased by up to twenty-five percent (25%) as set forth in Sec. 30-15 table 1, the "Lot area per unit" column, provided that in acting on the special permit the Board of Aldermen determine that the level of impact of the development on services and appearance is not unprecedented in the neighborhood. To the extent determined by the Director of Planning and Development to be necessary for accommodating the bonus units, increases by up to 25% in maximum building lot coverage and, where applicable floor area ratio, and decreases by up to 25% in minimum amount of open space may be allowed per the requirements of Sec. 30-15 Table 1.
- b) *Expedited Review.* Developments in which the percentage of Inclusionary Units to be provided exceeds 30% of the development total shall be given expedited application and review procedures to the extent possible and to the extent consistent with assuring well-considered outcomes, through measures such as giving them scheduling priority and arranging for concurrent rather than sequential agency reviews.

Analysis and Recommendation

The “incentive” provision described above could make the Inclusionary Zoning Ordinance more attractive relative to the Comprehensive Permit process, but its usefulness depends in large part on the zoning district in which a proposed development is to be located and a developer’s particular interest in providing additional affordable units. It does not appear to provide much incentive to those seeking to maximize profits from market rate units or to those in zoning districts with high requirements for (minimum) lot area per dwelling unit.

Consider the example of a recent Comprehensive Permit project completed by AvalonBay on Boylston Street (Route 9) in Chestnut Hill, on a site partly in the Business 1 district and partly in Multi Residence 3. As **Table 3** below shows, the actual development has 204 units, of which 43 (21%) are affordable. Redevelopment of this site under current Inclusionary Zoning Ordinance could have yielded up to 169 units (based solely on the lot area per unit requirement), a minimum of 25 (15%) of which would have been designated as Inclusionary Units (leaving 144 available for market-rate sales). Redevelopment of this site under the proposed Inclusionary Zoning amendment with the incentive (included with Petition #303-07) would have yielded the highest number of units, 226, and the highest percentage and number of Inclusionary Units, 82 units (36%); assuming the developer wanted to maximize market rate units, the number of market rate units would have remained the same as with no bonus at 144 (since the proposed bonus requires that for each additional unit, one must be deemed “Inclusionary,” effectively meaning that every bonus unit is an Inclusionary Unit). In contrast with either the current or as proposed Inclusionary Zoning Ordinance, *the Comprehensive Permit process under which the project was actually built still led to the most market rate units, 161 versus 144 units.* In this example, for a developer interested in maximizing the market rate potential of their development, the Comprehensive Permit process remains a more attractive alternative, though for a developer interested in maximizing affordable units, development under the Inclusionary Zoning Ordinance *with the proposed incentive could be preferable. The Planning Department supports this proposed change.*

Table 3: Example of Proposed Incentive

AvalonBay, Boylston St.	
Possible development under current Inclusionary Ordinance	
Minimum lot area per unit (sq. ft.) as required by zoning	1,200
Lot size (sq. ft.)	203,159
Maximum possible number of units	169
Minimum number of Inclusionary Units (IZ) required (15%)	25
Number of market rate units assuming IZ units are at minimum required	144
Percent Inclusionary Units	15%
Possible development under proposed Inclusionary Ordinance with new incentive provision	
Minimum lot area per unit (sq. ft.) (<i>Reduced by 25%</i>)	900
Maximum possible number of units	226
Minimum number of Inclusionary Units required	82
Number of market rate units assuming IZ units are at minimum required	144
Percent Inclusionary Units	36%
Redevelopment of this site under Comprehensive Permit (actual)	
Number of units	204
Number of affordable units	43
Number of market rate units	161
Percent affordable as defined by MGL Chapter 40B	21%

The decision to use Inclusionary Zoning with the incentive versus the Comprehensive Permit process would also depend in large part on the zoning district. In those districts that are very restrictive regarding minimum lot area per dwelling unit, such as the Single Residence districts and Mixed Use districts (where minimum per dwelling unit is 10,000 sq. ft.) or even the Multi Residence 3 (where minimum per dwelling unit for multi-family dwellings is 3,000 sq. ft.), there is less incentive to build under Inclusionary Zoning even with the proposed incentive. Indeed, an analysis of AvalonBay's apartment complex on Needham Street reveals that, under current MU1 zoning, even with the proposed incentive, the developer could only have built a total of 45 units because of the relatively high lot area per dwelling unit requirement, as opposed to the 294 that were actually constructed under AvalonBay's Comprehensive Permit.

Similarly, the proposed (Inclusionary Zoning) incentive would not likely have provided enough inducement to the Parkview Homes at 192 Lexington Street, where the developer was expressly interested in building all affordable housing. The project, in an SR3 district, is on a lot of just over one acre, which can only accommodate a single dwelling unit under Sec. 30-15 Table 1 (special permits are available for attached or detached single-family dwellings in this district, but only on larger lots). The proposed incentive would therefore have offered no inducement. By using the Comprehensive Permit process, the developer could build 10 units, all of which would be affordable.

In the Planning Department's analysis, the incentive is a positive step, though it will only be attractive in certain circumstances: developers must want to maximize affordable housing, and the project must be located in a zoning district where the

minimum lot area per unit is relatively low (such as Business zones 1-4 or MR3 or 4 zones). It is unclear what kind of reductions in open space or increases in maximum building lot coverage would be needed to accommodate the bonus units, since these would depend on specific site plans; however, the Planning Department is comfortable that they may not exceed 25%. ***The Planning Department supports this proposed change.***

The second portion of the proposed incentive, expedited review for projects exceeding 30% Inclusionary Units, might also offer some encouragement to developers considering the special permit process versus the Comprehensive Permit. However, given that much of the special permit process is determined by legal requirements for hearing and comment periods, and given that the City is also responsible to move other projects through the development "pipeline" to meet those same requirements, the Planning Department is not sure whether and how to guarantee expedited review, though the ***Planning Department is comfortable with the proposed language that states that expedited review will occur "to the extent possible."*** The current practice is to schedule projects at the earliest meeting date after submittal of a complete application; when there are more requests requiring review than can be considered at a single meeting, Inclusionary Zoning projects could be given priority for the first available meeting.

3. RESIDENT PREFERENCES

Description

Current Inclusionary Zoning provisions require a resident selection plan that gives an absolute preference to City employees and then to residents of or workers in the City. Because of this absolute preference, members of the Newton Fair Housing Committee have expressed concern that it would be found to be discriminatory if it were challenged in court. This absolute preference also does not meet the new Massachusetts Department of Housing and Community Development (DHCD) Guidelines for Affirmative Marketing and units created under this policy would not be approved for listing on the Mass. Subsidized Housing Inventory. Finally, this section is not consistent with the City's Human Rights statement regarding housing policy as set out in Sec. 12-50 of the City's Revised Ordinances.

The petition would ensure that Newton's Inclusionary Zoning is consistent with civil rights laws and with procedures required for non-City housing programs such as the Commonwealth's Local Initiatives Program (LIP). The proposal would give equal preference to individuals or families who live in Newton, households with a member who works in Newton or has been hired or given an offer to do so, and households with a member who attends public school in Newton, and would also prioritize units for people with disabilities who meet the above criteria.

Specifically, the petition would delete current **Sec. 30-15(f)(8)b** and replace it with the following:

b) A marketing and resident selection plan which shall:

- (i) Assure that there is no delay, denial, or exclusion from the development based upon a characteristic protected by Newton's Human Rights Ordinance (Sec. 14-34) and applicable fair housing and civil rights laws. Those laws forbid housing discrimination based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance programs, or the requirements of such programs;
- (ii) Include an affirmative fair housing marketing and tenant selection plan for the Inclusionary Units based upon the procedures established by the Massachusetts Department of Housing and Community Development for marketing, local preferences, and lotteries under Comprehensive Permit Guidelines Sec. III as in effect June 1, 2009;
- (iii) Use fair methods for accepting applications and assigning units, such as accepting applications over a period of weeks, accepting applications by mail, and using lotteries to distribute units and establish waiting lists; and
- (iv) Provide for local selection preferences for up to 70% of the Inclusionary Units, or such lower share as may be required by other applicable authorities.

Preference shall be given for qualified applicants who fall within any of the following equally weighted categories: (1) individuals or families who live in Newton; (2) households with a household member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton; (3) and households with a household member who attends a public school in Newton.

Preferences for those dwelling units which are designed or modified to be accessible to people with disabilities shall be assigned (a) first to households that as well as having one or more of the four preferences above also include a member needing the features of the unit, then (b) to households having none of the above preferences but that include a member needing the features of the unit, then (c) to other households having one or more of the preferences above, and then (d) to other applicants.

Analysis and Recommendation

Although the potential list of tenants or purchasers of Inclusionary Units will expand the list of preferred tenants or owners, all must live; work, or have offers to work; and attend school in Newton. Under the revised Inclusionary Zoning provisions, City employees would not be denied preference, but they will be joined in the preference pool by others with a Newton connection. The revised procedures would meet State and local

requirements while also providing local preferences in the selection of up to 70% of new affordable units.

The Planning Department concurs that updating resident preferences will ensure that marketing and tenant selection practices are consistent and comply with civil rights laws. The Planning Department supports this proposed change.

4. **AFFORDABILITY WINDOW**

Description

Current Inclusionary Zoning provisions set the sales price of an Inclusionary Unit at a price affordable to a household earning 70% of area median income (AMI) for households (as defined by the U.S. Department of Housing and Urban Development for Newton's designated statistical area), limiting monthly housing payments (including mortgage, insurance, taxes, parking, and other fees) to 30% of a household's monthly income (Sec. 30-15(f)(1)b)ii)). However, a separate provision of the Inclusionary Zoning Ordinance requires that two-thirds of Inclusionary Units must be provided to households earning not more than 80% AMI, while the remaining third can be offered to those earning more, up to 120% AMI (Sec. 30-15(f)(1)b)iv). Taken together, the Ordinance allows sale of one-third of the Inclusionary Units to households earning up to 120% AMI, but prices for these families must be set for those earning 70% AMI.

This petition would amend the Inclusionary Zoning Ordinance to remove this inconsistency. It would state simply that the sales price must be affordable to a household having an income 10 percentage points lower than the maximum eligible income for the unit. For the two-thirds of units that must be available to those earning a maximum of 80% AMI, the petition would set the sales price at 70%; for the remaining one-third, that may earn up to 120% AMI, the sales price would be set for those earning up to 110% area median income.

Specifically, the petition would amend **Sec. 30-24(f)(1)b)(ii)** by deleting it and inserting in its place the following language:

The sales price of Inclusionary Units for sale shall be affordable to an Eligible Household having an income ten (10) percentage points lower than the maximum eligible income for that unit as provided in Sec. 30-24(f)(1)a). For example, if the maximum eligible income for the unit is based upon household incomes at 120% of the area median income then the maximum sales price must be affordable to households at 110% of the area median income.

The proposal would remove from the existing section a clause explaining how monthly housing payments may not exceed 30% of monthly income; however, as this same information appears in existing zoning Sec. 30-24(f)(1)b)i).

Analysis & Recommendation

The petition would make a clear distinction between *eligibility* for the units and the *affordability* of the units. To be eligible for an Inclusionary Unit, a household must have an income of no more than 80% or 120% of AMI. But in order to make the units affordable to a range of households below these limits, current policy for most State and local affordable housing programs prices the units at 10 percent below the State income threshold. The proposed change would carry this policy into Newton's zoning ordinance, ensuring that a family at the higher end of eligibility, such as those earning 120% AMI, would pay housing costs appropriate to families at 110% AMI rather than 70% AMI. The current zoning language sets the price at 70% AMI regardless of the income threshold, meaning that households at 120% AMI might be paying as little as 10% of their gross income for housing costs. *The Planning Department supports this proposed change.*

5. SALES PRICE FLEXIBILITY

Description

As noted above, current Inclusionary Zoning provisions require that two-thirds of Inclusionary Units be available to households earning not more than 80% AMI, and the remaining third may be offered to households earning up to and including 120% AMI. It has been unclear whether the one-third had to be available to those *falling between* 80 and 120% AMI, or if they could be available to *any* income level at 120% or below.

This petition clarifies that while two-thirds of Inclusionary Units must be available to those earning 80% AMI or less, the remainder can be made available to any household earning up to and including 120% AMI. Under the change, it would be clear, for example, that *all* units could be priced for families earning 80% AMI.

Specifically, the petition proposes deleting **Sec. 30-24(f)(1)b(iv)** and inserting it its place the following language:

iv) Where three or more Inclusionary Units are provided in a development under Sec. 30-24(f)(3), the Eligible Household income limit for at least two-thirds of the Inclusionary Units offered for sale (rounded to the nearest whole number) shall be not more than 80 per cent of the Area Median Income at the time of marketing. The Eligible Household limit for the remaining Inclusionary Units may be set at any level(s) up to 120 per cent of the Area Median Income at the time of marketing.

The petition would also insert the following language defining Area Median Income in **Sec. 30-24(f)(1)**:

- c) 'Area Median Income ('AMI')' shall mean the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the United States Department of Housing and Urban Development."

Analysis & Recommendation

In the opinion of the Planning Department, the current Inclusionary Zoning is intended to allow one-third of units to be available to anyone earning less than 120% AMI, whether they fall below 80% or not. *The Planning Department views this change as a clarification and not a substantive change and is in support of it.*

6. COUNTING UNITS UNDER CHAPTER 40B

Description

Newton's current Inclusionary Zoning Ordinance does not explicitly state that Inclusionary Units must be consistent with the Massachusetts Department of Housing and Community Development (DHCD) requirements for affordable units developed under Chapter 40B. Petition #303-07 proposes new language to ensure that Inclusionary Units developed under Inclusionary Zoning and that are made available to those at or below 80% area median income are counted toward the City's goal of achieving 10% affordable housing, as calculated by DHCD on its Subsidized Housing Inventory, unless the requirement is waived by the Board of Alderman in the special permit process.

Specifically, the petition would insert the following in **Sec. 30-24(f)(1)b)**:

- vi) Inclusionary Units must be qualified as 'Local Action Units' pursuant to the requirements of the *Comprehensive Permit Guidelines* of the Massachusetts Department of Housing and Community Development, Sec. VI.C Local Action Units, as in effect July 30, 2008 unless:
 - the income eligibility for the unit exceeds 80% of the Area Median Income, or
 - the unit is exempted from this requirement by another provision of Sec. 30-24(f), or
 - the unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in DHCD regulations or guidelines.

Analysis & Recommendation

Since this requirement would ensure that Inclusionary Units priced for families at 80% AMI or below qualify to meet DHCD guidelines, and will therefore count toward the City's affordable housing goal of 10%, *the Planning Department supports this proposed change.*²

7. APPLICABILITY OF THE 15% RULE

Description

Current Inclusionary Zoning Ordinance states that 15% of units shall be Inclusionary Units, reserved for sale or rental to eligible households, but that if there are any existing units on the property subject to determination by the Newton Historical Commission, these shall be omitted from the calculation of Inclusionary Units. This petition removes the reference to the Historical Commission, instead stating that *any* existing units to be retained on a site shall not be included in calculations to determine the number of units that must be deemed inclusionary.

The petition would delete **Sec. 30-24(f)(3)** and replace it with the following:

- (3) **Inclusionary Units.** Where a special permit is required for development as described in Sec. 30-24(f)(2), Inclusionary Units shall be provided equaling no fewer than 15 per cent of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of Inclusionary Units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Inclusionary Units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of Market Rate units in the development.

Analysis & Recommendation

This proposed change clarifies that only new units, which add to the City's housing stock, are to be included in the calculation of Inclusionary Units. Since new units add to the City's burden of meeting the 10% affordable housing objective of Chapter 40B, but rehabilitated do not, the petition's proponents propose that only these should be included in the calculation of Inclusionary Units. For example, in a 10-unit project that includes an original single-family home that will be rehabbed to provide 1 unit, only 9 units will be used as the basis for calculating the 15% Inclusionary Units.

The current petition states that the inclusionary requirement will be 15% of any net new units created on properties including "existing residential property subject to determination by the Newton Historical Commission under Sec. 22-44 or any successor

² As is currently the case, units over 80% AMI do not count toward the 10% goal (unless they are rental units created through the Comprehensive Permit process). However, the City is seeking a diversity of family incomes in housing, including families between 80% and 120% AMI who are squeezed out of Newton's housing market because of high prices. Therefore the current Inclusionary Zoning ordinance allows provision for these families despite the fact that the housing will not count toward the City's 10% goal.

CITY OF NEWTONDRAFT
#303-07IN BOARD OF ALDERMEN

ORDINANCE NO. ____

DATE ____

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended with respect to Chapter 30 **Zoning** as follows:

1. Amend Zoning **Section 30-24(f)(4)** by deleting it and inserting in its place the following language:

“(4) Cash Payment.

"a) *Eligibility.* The inclusionary unit requirements of section 30-24(f)(3) may, if proposed by the applicant in its special permit application, alternatively be met through payment of a Fee In Lieu of providing those inclusionary units. Such request shall be approved only if the development (a) contains no more than six dwelling units or (b) the Board of Aldermen, in acting upon the special permit for the development, make specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a fee rather than inclusionary units. The findings shall include consideration of how wide the disparity would be in unit size and price between on-site market-rate and affordable units, the appropriateness of the development site location for income-eligible households regarding proximity to and quality of public transportation, schools, and other services; and the level of uncommitted funds in the Receipts Reserved for Appropriation Fund.

"b) *Fee amount.* The first two units in a development granted a Certificate of Occupancy shall require no Fee In Lieu. For each remaining unit in the development the Fee In Lieu shall be equal to 12 percent of the sales price at closing of each unit as verified by the planning and development department or, if rental housing, the cash payment shall be equal to 12 percent of the estimated assessed value of each unit as determined by the city assessor.

"c) *Fee recipient.* The fee payment shall be made to a Receipts Reserved for Appropriation fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for Eligible Households. The Authority and the department shall each maintain an ongoing record of payments to the fund on their behalf and

ordinance.” Under this existing language, only existing homes that are 50 years old or more or are on the National Register are included in this exemption. The petition removes the reference to the Newton Historical Commission, so that *any* existing unit, no matter how old, is to be treated the same way, and not counted for purposes of calculating the 15% inclusionary requirement. *The Planning Department is supportive of this change.*

8. *RESTORING OMISSIONS*

Description

The final proposed change in petition #303-07 is to *restore two paragraphs that the Board of Alderman adopted as part of Ordinance X-48*, dated April 22, 2003 (*SEE ATTACHMENT “C”*), but that were inadvertently omitted from the body of the Inclusionary Zoning text when the City’s Revised Ordinances were printed in 2007. The petition also proposes to make one change to these omitted paragraphs: original Ordinance X-48 listed the Housing Authority as having responsibility for accepting annual compliance reports on inclusionary rental housing; the petition would move this responsibility to the Director of Planning and Development (see paragraph g) below).

Specifically, the petition proposes inserting at the end of **Sec. 30-24(f)(8)** the following:

- f) at the discretion of the Applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the City Solicitor, to convey rental units to the Newton Housing Authority for sale or rental to Eligible Households; and
- g) in the case of rental housing, an agreement to submit an annual compliance report to the Newton Director of Planning and Development, in a form approved by the City solicitor, certifying compliance with the provisions of Sec. 30-24(f) of the zoning ordinances; provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton Housing Authority.

Analysis & Recommendation

The Clerk’s Office has confirmed that Sec. 30-24(f)(8), paragraphs f) and g), were inadvertently admitted from the City’s Revised Ordinances due to scrivener’s error. According to the Law Department, there is technically no need to re-adopt these paragraphs *as they were written* in the 2003 Inclusionary Ordinance. However, a vote is required to amend paragraph g) as proposed, to require that a compliance report be submitted to the Director of Planning and Development rather than Newton Housing Authority. *The Planning Department is supportive of this change.*

III. OVERALL RECOMMENDATION

For the reasons enumerated above, the Planning Department supports the adoption of all changes includes as part of Petition #303-07.

shall report annually to the board of aldermen on the use of the proceeds for the purposes stated herein.”

2. Amend Zoning **Section 30-24(f)** by inserting the following language at the end thereof:

“(16) Incentives.

"a) *Density*. A density bonus shall be granted equal to one unit for each additional Inclusionary Unit provided above the number required by Section 31- 24(f)(3) Inclusionary Units, up to a limit where lot area per dwelling unit is decreased by up to fifty percent (50%) as set forth in Section 30-15 table 1, the “Lot area per unit” column, provided that in acting on the special permit the Board of Aldermen determine that the level of impact of the development on services and appearance is not unprecedented in the neighborhood. To the extent determined by the Director of Planning and Development to be necessary for accommodating the bonus units, increases by up to 30% in maximum building lot coverage and, where applicable floor area ratio, and decreases by up to 30% in minimum amount of open space may be allowed per the requirements of Section 30-15 Table 1.

"b) *Expedited Review*. Developments in which the percentage of Inclusionary units to be provided exceeds 30% of the development total shall be given expedited application and review procedures to the extent possible and to the extent consistent with assuring well-considered outcomes, through measures such as giving them scheduling priority and arranging for concurrent rather than sequential agency reviews.”

3. Amend Zoning **Section 30-24(f)(8)b)** by deleting it and inserting it its place the following language:

"b) A marketing and resident selection plan which shall:

"(i) Assure that there is no delay, denial, or exclusion from the development based upon a characteristic protected by Newton’s human rights ordinance (Section 14-34) and applicable fair housing and civil rights laws. Those laws forbid housing discrimination based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance programs, or the requirements of such programs.

"(ii) Include an affirmative fair housing marketing and tenant selection plan for the Inclusionary Units based upon the procedures established by the Massachusetts Department of Housing and Community Development for marketing, local preferences, and lotteries under Comprehensive Permit Guidelines Section III as in effect July 30, 2008.

"(iii) Use fair methods for accepting applications and assigning units, such as accepting applications over a period of weeks, accepting applications by mail, and using lotteries to distribute units and establish waiting lists;

- "(iv) Provide for local selection preferences for up to 70% of the Inclusionary Units, or such lower share as may be required by other applicable authorities.

Preference shall be given for qualified applicants who fall within any of the following equally weighted categories: (1) individuals or families who live in Newton; (2) households with a household member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton; (3) and households with a household member who attends a public school in Newton.

Preferences for those dwelling units which are designed or modified to be accessible to people with disabilities shall be assigned (a) first to households that as well as having one or more of the four preferences above also include a member needing the features of the unit, then (b) to households having none of the above preferences but that include a member needing the features of the unit, then (c) to other households having one or more of the preferences above, and then (d) to other applicants."

4. Amend Zoning **Section 30-24(f)(1)b(ii)** by deleting it and inserting it its place the following language:

- "(ii) The sales price of Inclusionary Units for sale shall be affordable to an Eligible Household having an income ten (10) percentage points lower than the maximum eligible income for that unit as provided in Section 30-24(f)(1)a). For example, if the maximum eligible income for the unit is based upon household incomes at 120% of the area median income then the maximum sales price must be affordable to households at 110% of the area median income."

5. Amend Zoning **Section 30-24(f)(1)b(iv)** by deleting it and inserting it its place the following language:

- "(iv) Where three or more Inclusionary Units are provided in a development under section 30-24(f)(3), the Eligible Household income limit for at least two-thirds of the Inclusionary Units offered for sale (rounded to the nearest whole number) shall be not more than 80 per cent of the Area Median Income at the time of marketing. The Eligible Household limit for the remaining Inclusionary Units may be set at any level(s) up to 120 per cent of the Area Median Income at the time of marketing."

And by amending Zoning **Section 30-24(f)(1)** by inserting the following language at the end thereof:

- "c) 'Area Median Income ('AMI')' shall mean the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the United States Department of Housing and Urban Development."

6. Amend Zoning **Section 30-24(f)(1)b** by inserting the following language at the end thereof:

“vi) Inclusionary units must be qualified as ‘Local Action Units’ pursuant to the requirements of the *Comprehensive Permit Guidelines* of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect July 30, 2008 unless:

- the income eligibility for the unit exceeds 80% of the Area Median Income, or
- the unit is exempted from this requirement by another provision of Section 30-24(f), or
- the unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in DHCD regulations or guidelines.”

7. Amend Zoning **Section 30-24(f)(3)** by deleting it and inserting it its place the following language:

“(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), inclusionary units shall be provided equaling no fewer than 15 per cent of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of Inclusionary Units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Inclusionary Units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of Market Rate units in the development.”

8. Amend Zoning **Section 30-24(f)(8)** by inserting the following language at the end thereof:

- “f) at the discretion of the Applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the city solicitor, to convey rental units to the Newton Housing Authority for sale or rental to Eligible Households; and
- “g) in the case of rental housing, an agreement to submit an annual compliance report to the Newton Director of Planning and Development, in a form approved by the city solicitor, certifying compliance with the provisions of section 30-24(f) of the zoning ordinances; provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton Housing Authority.”

ATTACHMENT B: Comparison of Current Inclusionary Zoning and Amendments Proposed in Petition #303-07

Current Sec. 30-24(f)	Proposed Amendments Sec. 30-24(f) Amendments shown in <u>outline below</u> ; text to remain shown in black.
<p>(f). <i>Inclusionary Zoning</i></p> <p><u>Purposes:</u> The purposes of this section 30-24(f) are to promote the public health, safety, and welfare by encouraging diversity of housing opportunities in the City; to provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes in order to meet the City's goal of preserving its character and diversity; to mitigate the impact of residential development on the availability and cost of housing, especially housing affordable to low and moderate income households; to increase the production of affordable housing units to meet existing and anticipated housing needs within the City; to provide a mechanism by which residential development can contribute directly to increasing the supply of affordable housing in exchange for a greater density of development than that which is permitted as a matter of right; and to establish requirements, standards, and guidelines for the use of such contributions generated from the application of inclusionary housing provisions.</p> <p>(1) <u>Definitions.</u></p> <p>a) "Eligible Household" shall mean: for rental housing, any household whose total income does not exceed 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size; and in the case of for-sale housing, any household whose total income does not exceed 120 per cent of the median income for households in the United States Department of Housing and Urban Development designated</p>	<p>(f). <i>Inclusionary Zoning</i></p> <p><u>Purposes:</u> The purposes of this section 30-24(f) are to promote the public health, safety, and welfare by encouraging diversity of housing opportunities in the City; to provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes in order to meet the City's goal of preserving its character and diversity; to mitigate the impact of residential development on the availability and cost of housing, especially housing affordable to low and moderate income households; to increase the production of affordable housing units to meet existing and anticipated housing needs within the City; to provide a mechanism by which residential development can contribute directly to increasing the supply of affordable housing in exchange for a greater density of development than that which is permitted as a matter of right; and to establish requirements, standards, and guidelines for the use of such contributions generated from the application of inclusionary housing provisions.</p> <p>(1) <u>Definitions.</u></p> <p>a) "Eligible Household" shall mean: for rental housing, any household whose total income does not exceed 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size; and in the case of for-sale housing, any household whose total income does not exceed 120 per cent of the median income for households in the United States Department of Housing and Urban Development designated</p>

statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size, which is defined as the number of bedrooms plus one.

- b) "Inclusionary Unit(s)" shall mean any finished dwelling unit required to be for sale or rental under section 30-24(f) of the zoning ordinances.
- i) For Inclusionary Units that are rented to Eligible Households, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom, except in the event of an Eligible Household with a Section 8 voucher in which case the rent and income limits established by the Newton Housing Authority, with the approval of the U.S. Department of Housing and Urban Development, shall apply.
- ii) For Inclusionary Units that are sold to Eligible Households, the sales price of an Inclusionary Unit shall be affordable to a household earning 70 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of the Inclusionary Unit and adjusted for household size. The sales price shall then be determined from a calculation which limits the monthly housing payment for mortgage principal and interest, private mortgage insurance, property taxes, condominium or homeowner's association fees, insurance, and parking to not more than 30 per cent of the monthly income of an

statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size, which is defined as the number of bedrooms plus one.

- b) "Inclusionary Unit(s)" shall mean any finished dwelling unit required to be for sale or rental under section 30-24(f) of the zoning ordinances.
- i) For Inclusionary Units that are rented to Eligible Households, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom, except in the event of an Eligible Household with a Section 8 voucher in which case the rent and income limits established by the Newton Housing Authority, with the approval of the U.S. Department of Housing and Urban Development, shall apply.
- ii) The sales price of Inclusionary Units for sale shall be affordable to an Eligible Household having an income ten (10) percentage points lower than the maximum eligible income for that unit as provided in Section 30-24(f)(1)a). For example, if the maximum eligible income for the unit is based upon household incomes at 120% of the area median income then the maximum sales price must be affordable to households at 110% of the area median income.

appropriately sized household at the time of marketing of the Inclusionary Unit.

- iii) Where fewer than three Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size.
- iv) Where three or more Inclusionary Units are provided in a development under section 30-24(f)(3), two-thirds of the Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size. One-third of the Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 120 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size.
- v) Where two or more Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary

- iii) Where fewer than three Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size.

- iv) Where three or more Inclusionary Units are provided in a development under section 30-24(f)(3), the Eligible Household income limit for at least two-thirds of the Inclusionary Units offered for sale (rounded to the nearest whole number) shall be not more than 80 per cent of the Area Median Income at the time of marketing. The Eligible Household limit for the remaining Inclusionary Units may be set at any level(s) up to 120 per cent of the Area Median Income at the time of marketing.

- v) Where two or more Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary

Units required to be offered for rental shall be provided to Eligible Households such that the mean income of Eligible Households in the development does not exceed 65 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size. Where one Inclusionary Unit is provided in a development under section 30-24(f)(3), the Inclusionary Units required to be offered for rental shall be provided to an Eligible Household with a median income of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size.

Units required to be offered for rental shall be provided to Eligible Households such that the mean income of Eligible Households in the development does not exceed 65 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size. Where one Inclusionary Unit is provided in a development under section 30-24(f)(3), the Inclusionary Units required to be offered for rental shall be provided to an Eligible Household with a median income of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size.

vi) Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the *Comprehensive Permit Guidelines* of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect July 30, 2008 unless:

- the income eligibility for the unit exceeds 80% of the Area Median Income, or
- the unit is exempted from this requirement by another provision of Section 30-24(f), or
- the unit is exempted from this requirement by a

provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in DHCD regulations or guidelines

c) 'Area Median Income ('AMI')' shall mean the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the United States Department of Housing and Urban Development.

(2) Scope. Where a special permit is required under these Ordinances for residential development or for a business or mixed-use development that includes residential development beyond that allowable as of right or where the development is proposed to include or may include new or additional dwelling units totaling more than two households whether by new construction, rehabilitation, conversion of a building or structure, or an open space preservation development, the development shall be subject to the inclusionary zoning provisions of this section. This inclusionary zoning section does not apply to accessory units under section 30-8 (d) and 30-9(h) or to a conventional subdivision of land under G.L. c.41, §§ 81K *et seq.* other than an open space preservation development under section 30-15(k).

(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), 15 per cent of the units proposed for the development shall be Inclusionary Units and shall be reserved for sale or rental to Eligible Households. In the case of an existing residential property subject to determination by the Newton Historical Commission under section 22-44 or any successor ordinance, the inclusionary requirement shall be 15 per cent of the net new

(2) Scope. Where a special permit is required under these Ordinances for residential development or for a business or mixed-use development that includes residential development beyond that allowable as of right or where the development is proposed to include or may include new or additional dwelling units totaling more than two households whether by new construction, rehabilitation, conversion of a building or structure, or an open space preservation development, the development shall be subject to the inclusionary zoning provisions of this section. This inclusionary zoning section does not apply to accessory units under section 30-8 (d) and 30-9(h) or to a conventional subdivision of land under G.L. c.41, §§ 81K *et seq.* other than an open space preservation development under section 30-15(k).

(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), inclusionary units shall be provided equaling no fewer than 15 per cent of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of Inclusionary Units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a

units to be created on the property. For purposes of calculating the number of Inclusionary Units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. At the discretion of the Applicant, a development may include more than 15 per cent of its units as Inclusionary Units. Inclusionary Units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of Market Rate units in the development.

- (4) Cash Payment. Where the total number of dwelling units proposed in the development will not exceed six units, the Applicant may make a cash payment equal to 3 percent of the sales price at closing of each unit as verified by the planning and development department or if rental housing, the cash payment shall be equal to 3 percent of the estimated, assessed value of each unit as determined by the city assessor, in lieu of Inclusionary Units as provided in section 30-24 (f)(3). Certificates of Occupancy for the property shall not be issued until the cash payment has been made as verified by the planning and development department. This payment shall be made to an inclusionary housing development fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for Eligible Households. The comptroller shall annually review payments to the fund and use of the proceeds and shall certify to the board of aldermen that proceeds have been used for the purposes stated herein.

whole unit. Inclusionary Units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of Market Rate units in the development.

(4) Cash Payment

a) Eligibility. The inclusionary unit requirements of section 30-24(f)(3) may, if proposed by the applicant in its special permit application, alternatively be met through payment of a Fee In Lieu of providing those inclusionary units. Such request shall be approved only if the development (a) contains no more than six dwelling units or (b) the Board of Aldermen, in acting upon the special permit for the development, make specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a fee rather than inclusionary units. The findings shall include consideration of how wide the disparity would be in unit size and price between on-site market-rate and affordable units, the appropriateness of the development site location for income-eligible households regarding proximity to and quality of public transportation, schools, and other services, and the level of uncommitted funds in the Receipts Reserved for Appropriation Fund.

b) Fee amount. The first two units in a development granted a Certificate of Occupancy shall require no Fee In Lieu. For each remaining unit in the development the Fee In Lieu

shall be equal to 12 percent of the sales price at closing of each unit as verified by the planning and development department or, if rental housing, the cash payment shall be equal to 12 percent of the estimated assessed value of each unit as determined by the city assessor.

c) *Fee recipient.* The fee payment shall be made to a Receipts Reserved for Appropriation fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for Eligible Households. The Authority and the department shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the board of aldermen on the use of the proceeds for the purposes stated herein.

(5) Off-Site Development. Where an Applicant has entered into a development agreement with a non-profit housing development organization, Inclusionary Units otherwise required to be constructed onsite and within the development may be constructed or rehabilitated off site, the Applicant and the non-profit housing development organization must submit a development plan for off-site development for review and comment by the planning and development department prior to submission to the board of aldermen. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with subsections a), b), and c) of section 30-24(f)(6). As a condition of granting a special permit for the Applicant's development, the board of aldermen shall require

(5) Off-Site Development. Where an Applicant has entered into a development agreement with a non-profit housing development organization, Inclusionary Units otherwise required to be constructed onsite and within the development may be constructed or rehabilitated off site, the Applicant and the non-profit housing development organization must submit a development plan for off-site development for review and comment by the planning and development department prior to submission to the board of aldermen. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with subsections a), b), and c) of section 30-24(f)(6). As a condition of granting a special permit for the Applicant's development, the board of aldermen shall require

that off-site Inclusionary Units shall be completed no later than completion of the Applicant's Market Rate Units. If the off-site Inclusionary Units are not completed as required within that time, temporary and final occupancy permits shall not be granted for the number of Market Rate Units equal to the number of off-site Inclusionary Units which have not been completed. Where the board of aldermen determines that completion of off-site Inclusionary Units has been delayed for extraordinary reasons beyond the reasonable control of the Applicant and non-profit housing developer, the board of aldermen may, in its discretion, permit the Applicant to post a monetary bond and release one or more Market Rate Units. The amount of the bond shall be sufficient in the determination of the planning and development department to assure completion of the off-site Inclusionary Units.

- (6) Design and Construction. In all cases, Inclusionary Units shall be fully built out and finished dwelling units. Inclusionary Units provided on site must be dispersed throughout the development and must be sited in no less desirable locations than the Market Rate Units and have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of Market Rate Units in the development, and satisfy the following conditions:

a) Inclusionary Units shall have habitable space of not less than 650 square feet for a one bedroom unit and an additional 300 square feet for each additional bedroom or 60 percent of the average square footage of the Market Rate Units with the same number of bedrooms, whichever is greater; provided that Inclusionary Units shall not exceed 2,000 square feet of habitable space;

b) the bedroom mix of inclusionary units shall be equal to the

that off-site Inclusionary Units shall be completed no later than completion of the Applicant's Market Rate Units. If the off-site Inclusionary Units are not completed as required within that time, temporary and final occupancy permits shall not be granted for the number of Market Rate Units equal to the number of off-site Inclusionary Units which have not been completed. Where the board of aldermen determines that completion of off-site Inclusionary Units has been delayed for extraordinary reasons beyond the reasonable control of the Applicant and non-profit housing developer, the board of aldermen may, in its discretion, permit the Applicant to post a monetary bond and release one or more Market Rate Units. The amount of the bond shall be sufficient in the determination of the planning and development department to assure completion of the off-site Inclusionary Units.

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b) the bedroom mix of inclusionary units shall be equal to the

bedroom mix of the Market Rate Units in the development. In the event that Market Rate Units are not finished with defined bedrooms, all Inclusionary Units shall have three bedrooms;

- c) the materials used and the quality of construction for Inclusionary Units, including heating, ventilation, and air conditioning systems, shall be equal to that of the Market Rate Units in the development, as reviewed by the planning and development department; provided that amenities such as so-called designer or high end appliances and fixtures need not be provided for Inclusionary Units.

(7) Habitable Space Requirements. The total habitable space of Inclusionary Units in a proposed development shall not be less than 10 percent of the sum of the total habitable space of all Market Rate Units and all Inclusionary Units in the proposed development. As part of the application for a special permit under section 30-24(f), the Applicant shall submit a proposal including the calculation of habitable space for all Market Rate and Inclusionary Units to the planning and development department for its review and certification of compliance with this section as a condition to the grant of a special permit.

(8) Inclusionary Housing Plans and Covenants. As part of the application for a special permit under section 30-24(f), the Applicant shall submit an inclusionary housing plan that shall be reviewed by the Newton Housing Authority and the planning and development department and certified as compliant by the planning and development department. The plan shall include the following provisions:

- a) a description of the Inclusionary Units including at a minimum, floor plans indicating the location of the

bedroom mix of the Market Rate Units in the development. In the event that Market Rate Units are not finished with defined bedrooms, all Inclusionary Units shall have three bedrooms;

- c) the materials used and the quality of construction for Inclusionary Units, including heating, ventilation, and air conditioning systems, shall be equal to that of the Market Rate Units in the development, as reviewed by the planning and development department; provided that amenities such as so-called designer or high end appliances and fixtures need not be provided for Inclusionary Units.

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(8) Inclusionary Housing Plans and Covenants. As part of the application for a special permit under section 30-24(f), the Applicant shall submit an inclusionary housing plan that shall be reviewed by the Newton Housing Authority and the planning and development department and certified as compliant by the planning and development department. The plan shall include the following provisions:

- a) a description of the Inclusionary Units including at a minimum, floor plans indicating the location of the

Inclusionary Units, number of bedrooms per unit for all units in the development, square footage of each unit in the development, amenities to be provided, projected sales prices or rent levels for all units in the development, and an outline of construction specifications certified by the Applicant;

- b) A marketing and resident selection plan which includes an affirmative fair housing marketing program, including public notice and a disinterested resident selection process; provided that in the case of a marketing and selection for sale of Inclusionary Units to Eligible Households, the marketing and selection plan shall provide for "income blind" selection of Eligible Households and shall then provide for a preference order, to the extent permitted by law, first to City of Newton employees and then to residents of or workers in the City of Newton. In lieu of submitting a marketing and resident selection plan under this subsection, the Applicant may use a standard form marketing and resident selection plan developed by the planning and development department.

Inclusionary Units, number of bedrooms per unit for all units in the development, square footage of each unit in the development, amenities to be provided, projected sales prices or rent levels for all units in the development, and an outline of construction specifications certified by the Applicant;

- b) A marketing and resident selection plan which shall:

- (i) Assure that there is no delay, denial, or exclusion from the development based upon a characteristic protected by Newton's human rights ordinance (Section 14-34) and applicable fair housing and civil rights laws. Those laws forbid housing discrimination based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance programs, or the requirements of such programs.
- (ii) Include an affirmative fair housing marketing and tenant selection plan for the Inclusionary Units based upon the procedures established by the Massachusetts Department of Housing and Community Development for marketing, local preferences, and lotteries under Comprehensive Permit Guidelines Section III as in effect July 30, 2008.
- (iii) Use fair methods for accepting applications and assigning units, such as accepting applications over a

<p>c) Agreement by the Applicant that residents shall be selected at both initial sale and rental and all subsequent sales and rentals from listings of Eligible Households in accordance with the approved marketing and resident selection plan; provided that the listing of Eligible Households for</p>	<p>period of weeks, accepting applications by mail, and using lotteries to distribute units and establish waiting lists.</p> <p>(iv) Provide for local selection preferences for up to 70% of the Inclusionary Units, or such lower share as may be required by other applicable authorities.</p> <p>Preference shall be given for qualified applicants who fall within any of the following equally weighted categories: (1) individuals or families who live in Newton; (2) households with a household member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton; (3) and households with a household member who attends a public school in Newton.</p> <p>Preferences for those dwelling units which are designed or modified to be accessible to people with disabilities shall be assigned (a) first to households that as well as having one or more of the four preferences above also include a member needing the features of the unit, then (b) to households having none of the above preferences but that include a member needing the features of the unit, then (c) to other households having one or more of the preferences above, and then (d) to other applicants.</p> <p>c) Agreement by the Applicant that residents shall be selected at both initial sale and rental and all subsequent sales and rentals from listings of Eligible Households in accordance with the approved marketing and resident selection plan; provided that the listing of Eligible Households for</p>
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inclusionary rental units shall be developed, advertised, and maintained by the Newton Housing Authority while the listing of Eligible households for inclusionary units to be sold shall be developed, advertised, and maintained by the planning and development department; and provided further that the Applicant shall pay the reasonable cost to develop, advertise, and maintain the listings of Eligible Households.

- d) Agreement by the Applicant to develop, advertise, and provide a supplemental listing of Eligible Households to be used to the extent that Inclusionary Units are not fully subscribed from the Newton Housing Authority or the planning and development department listings of Eligible Households;
- e) Agreement that any special permit issued under section 30-24(f) shall require the Applicant to execute and record a covenant in the Middlesex Registry of Deeds or the Land Court Registry of Deeds for Middlesex County as *the* senior interest in title for each Inclusionary Unit and enduring for the life of the residential development, as follows:
 - i) for purchase units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit initial sale and subsequent re-sales of Inclusionary Units to Eligible Households in accordance with provisions reviewed and approved by the planning and development department which incorporate sections 30-24(f)(1)b(ii), (f)(8)b), (f)(8)c), (f)(8)d), and (f)(8)e); and

inclusionary rental units shall be developed, advertised, and maintained by the Newton Housing Authority while the listing of Eligible households for inclusionary units to be sold shall be developed, advertised, and maintained by the planning and development department; and provided further that the Applicant shall pay the reasonable cost to develop, advertise, and maintain the listings of Eligible Households.

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ii) for rental units, a covenant to be filed prior to grant of an occupancy permit and running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit rental of Inclusionary Units to Eligible Households in accordance with provisions reviewed and approved by the Newton Housing Authority which incorporate sections 30-24(f)(1)b(i), (f)(8)b), (f)(8)c), (f)(8)d) and (f)(8)e);

f) *At the discretion of the Applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the city solicitor, to convey rental units to the Newton Housing Authority for sale or rental to Eligible Households; and*

g) *In the case of rental housing, an agreement to submit an annual compliance report to the Newton Director of Planning and Development, in a form approved by the city solicitor, certifying compliance with the provisions of section 30-24(f) of the zoning ordinances; provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton Housing Authority.*

PARAGRAPHS F & G ABOVE WERE ADOPTED IN ORD. X-48 BUT INADVERTENTLY OMITTED FROM THE REVISED ORDINANCES IN 2007.

ii) for rental units, a covenant to be filed prior to grant of an occupancy permit and running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit rental of Inclusionary Units to Eligible Households in accordance with provisions reviewed and approved by the Newton Housing Authority which incorporate sections 30-24(f)(1)b(i), (f)(8)b), (f)(8)c), (f)(8)d) and (f)(8)e);

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(9) Public Funding Limitation. The intent of section 30-24(f) is that an Applicant is not to use public funds to construct Inclusionary Units required under this section; this provision however, is not intended to discourage the use of public funds to generate a greater number of affordable units than are otherwise required by this subsection. If the Applicant is a non-profit housing development organization and proposes housing at least 50 per cent of which is affordable to Eligible Households, it is exempt from this limitation.

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(10) Elder Housing with Services. In order to provide affordable elder housing with services on-site, the following requirements shall apply exclusively when an Applicant seeks a special permit for housing with services designed primarily for elders such as residential care, continuing care retirement communities, assisted living, independent living, and congregate care. The services to be provided shall be an integral part of the annual rent or occupancy related fee, shall be offered to all residents and may include in substantial measure long term health care and may include nursing, home health care, personal care, meals, transportation, convenience services, and social, cultural, and education programs. This section shall not apply to a nursing facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

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a) Maximum Contribution The Applicant shall contribute 2.5 percent of annual gross revenue from fees or charges for housing and all services, if it is a rental development or an equivalent economic value in the case of a non rental development. The amount of the contribution shall be determined by the director of planning and development, based on analysis of verified financial statements and associated data provided by the Applicant as well as other data the director may deem relevant.

b) Determination. The board of aldermen shall determine, in its discretion, whether the contribution shall be residential units or beds or a cash payment after review of the recommendation of the director of planning and development. In considering the number of units or beds, the director may consider the level of services, government

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- b) Determination. The board of aldermen shall determine, in its discretion, whether the contribution shall be residential units or beds or a cash payment after review of the recommendation of the director of planning and development. In considering the number of units or beds, the director may consider the level of services, government and private funding or support for housing and services, and the ability of low and moderate income individuals to contribute fees. The Applicant shall provide financial information requested by the director. If the petitioner or Applicant is making a cash contribution, the contribution shall be deposited in accordance with section 30-24(f)(4).
- c) Contributed Units or Beds Contributed units or beds shall be made available to individuals and households whose incomes do not exceed 80 percent of the applicable median income for elders in the Boston Municipal Statistical Area, adjusted for household size.
- d) Selection The Applicant or manager shall select residents from a listing of eligible persons and households developed, advertised, and maintained by the Newton Housing Authority; provided that the Applicant shall pay

and private funding or support for housing and services, and the ability of low and moderate income individuals to contribute fees. The Applicant shall provide financial information requested by the director. If the petitioner or Applicant is making a cash contribution, the contribution shall be deposited in accordance with section 30-24(f)(4).

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- d) Selection The Applicant or manager shall select residents from a listing of eligible persons and households developed, advertised, and maintained by the Newton Housing Authority; provided that the Applicant shall pay the reasonable costs of the Newton Housing Authority to develop, advertise, and maintain the listing of eligible persons and households. Should the Applicant or manager be unable to fully subscribe the elder housing with services development from the Newton Housing Authority listing, the Applicant or manager shall recruit eligible persons and households through an outreach program approved by the director planning and development. The Applicant or manager shall certify its compliance with this section 30-24(f)(9) annually in a form and with such information as is required by the director of planning and development. To the extent permitted by law, Newton residents shall have first opportunity to participate in the elder housing with services program set out here.
- e) Residential Cash Balances If, after calculation of the number of units or beds to be contributed under this section 30-

the reasonable costs of the Newton Housing Authority to develop, advertise, and maintain the listing of eligible persons and households. Should the Applicant or manager be unable to fully subscribe the elder housing with services development from the Newton Housing Authority listing, the Applicant or manager shall recruit eligible persons and households through an outreach program approved by the director planning and development. The Applicant or manager shall certify its compliance with this section 30-24(f)(9) annually in a form and with such information as is required by the director of planning and development. To the extent permitted by law, Newton residents shall have first opportunity to participate in the elder housing with services program set out here.

e) Residential Cash Balances If, after calculation of the number of units or beds to be contributed under this section 30-24(f), there remains an annual cash balance to be contributed, that amount shall be contributed as set out in subparagraph b) above. Any such contribution shall not reduce the contribution required in future years.

(11) Hotels. Whenever an application for a special permit seeks to increase the density of residential development for a hotel, the board of aldermen shall require a cash payment as a condition of any such grant. The amount of the payment shall be determined as 10 per cent of the number of rooms in excess of that which existed on January 1, 1989 multiplied by the estimated per room valuation following construction, as determined by the assessing department. Payment shall be made in accordance with section 30-24(f)(4).

(12) No Segmentation. An Applicant for residential development shall not segment or divide or subdivide or establish surrogate

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(12) No Segmentation. An Applicant for residential development shall not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of this section 30-24(f). Where the board of aldermen determines that this provision has been violated, a special permit will be denied. However, nothing herein prohibits phased development of a property.

(13) No Effect on Prior or Existing Obligations. This amendment to section 30-24(f) shall have no effect on any prior or currently effective special permit, obligation, contract, agreement, covenant or arrangement of any kind, executed or required to be executed, which provides for dwelling units to be made available for sale or rental to or by the City, the Newton Housing Authority, or other appropriate municipal agency, or any cash payment so required for affordable housing purposes, all resulting from a special permit under section 30-24(f) applied for or granted prior to the effective date of this amendment.

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(14) No Effect on Accessory Apartments. This section 30-24(f) shall not apply to accessory apartments regulated under sections 30-8(d) and 30-9(h).

(15) Severability, effect on other laws. The provisions of section 30-24(f) are severable. If any subsection, provision, or portion of this section is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this section shall continue to be valid.

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(16) Incentives.

a) Density. A density bonus shall be granted equal to one unit for each additional Inclusionary Unit provided above the number required by Section 31-24(f)(3) Inclusionary Units, up to a limit where lot area per dwelling unit is decreased by up to fifty percent (50%) as set forth in Section 30-15 table 1, the "Lot area per unit" column, provided that in acting on the special permit the Board of Aldermen determine that the level of impact of the development on services and appearance is not unprecedented in the neighborhood. To the extent determined by the Director of Planning and Development to be necessary for accommodating the bonus units, increases by up to 30% in maximum building lot coverage and, where applicable floor area ratio, and decreases by up to 30% in minimum amount of open space may be allowed per the requirements of Section 30-15 Table 1.

b) Expedited Review. Developments in which the percentage of Inclusionary units to be provided exceeds 30% of the development total shall be given expedited application and review procedures to the extent possible and to the extent consistent with assuring well-considered outcomes, through

	measures such as giving them scheduling priority and arranging for concurrent rather than sequential agency reviews.”
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#20-03

CITY OF NEWTONIN THE BOARD OF ALDERMEN

April 22, 2003

ORDINANCE NO. X-48

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the zoning regulations, Chapter 30 of the Revised Ordinances of the City of Newton, Mass. 2001, as amended, be and are hereby further amended as follows:

1. Delete the existing text of Section 30-24(f) and substitute therefor the following new text of Section 30-24(f) as follows:

Section 30-24(f): Inclusionary Zoning

Purposes: The purposes of this section 30-24(f) are to promote the public health, safety, and welfare by encouraging diversity of housing opportunities in the City; to provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes in order to meet the City's goal of preserving its character and diversity; to mitigate the impact of residential development on the availability and cost of housing, especially housing affordable to low and moderate income households; to increase the production of affordable housing units to meet existing and anticipated housing needs within the City; to provide a mechanism by which residential development can contribute directly to increasing the supply of affordable housing in exchange for a greater density of development than that which is permitted as a matter of right; and to establish requirements, standards, and guidelines for the use of such contributions generated from the application of inclusionary housing provisions.

(f)(1) Definitions.

- a) "Eligible Household" shall mean: for rental housing, any household whose total income does not exceed 80 percent of the applicable median income for households in the Boston Metropolitan Statistical Area, adjusted for household size; and for for-sale housing, any household whose total income does not exceed 120 percent of the applicable median income for households in the Boston Metropolitan Statistical Area, adjusted for household size.
- b) "Inclusionary Unit(s)" shall mean any finished dwelling unit required to be for sale or rental under section 30-24(f) of the zoning ordinances.

- (i) For Inclusionary Units that are rented to Eligible Households, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom, except in the event of an Eligible Household with a Section 8 voucher in which case the rent and income limits established by the Newton Housing Authority, with the approval of the U.S. Department of Housing and Urban Development, shall apply.
- (ii) For Inclusionary Units that are sold to Eligible Households, the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed 33 percent of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom.
- (iii) Where less than three Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 percent of the median income for the Boston Metropolitan Statistical Area, adjusted for household size.
- (iv) Where three or more Inclusionary Units are provided in a development under section 30-24(f)(3), two thirds of the Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 percent of the median income for the Boston Metropolitan Statistical Area, adjusted for household size. One third of the Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 120 percent of the median income for the Boston Metropolitan Statistical Area, adjusted for household size.
- (v) Where two or more Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for rental shall be provided to Eligible Households such that the aggregate median income of Eligible Households in the development does not exceed 65 percent of the median income for the Boston Metropolitan Statistical Area, adjusted for household size. Where one Inclusionary Unit is provided in a development under section 30-24(f)(3), the Inclusionary Unit required to be offered for rental shall be provided to Eligible Households with a median income of not more than 80 percent of the median income for the Boston Metropolitan Statistical Area, adjusted for household size.

- c) "Applicant" shall mean: that individual, organization, or company that applies to the board of aldermen for a special permit that is subject to the requirements of section 30-24(f) of the zoning ordinances.

(f)(2) Scope. Where a special permit is required under these Ordinances for residential development or for a business or mixed-use development that includes residential development beyond that allowable as of right or where the development is proposed to include or may include new or additional dwelling units totaling more than two households whether by new construction, rehabilitation, conversion of a building or structure, or an open space preservation development, the development shall be subject to the inclusionary zoning provisions of this section. This inclusionary zoning section does not apply to accessory units under section 30-8 (d) and 30-9(h) or to a conventional subdivision of land under G.L. c.41, §§ 81K *et seq.* other than an open space preservation development under section 30-15(k).

(f)(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), 15 percent of the units proposed for the development shall be Inclusionary Units and shall be reserved for sale or rental to Eligible Households. In the case of an existing residential property subject to determination by the Newton Historical Commission under section 22-44, the inclusionary requirement shall be 15 percent of net new units to be created on the property. For purposes of calculating the number of Inclusionary Units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. At the discretion of the Applicant, a development may include more than 15 percent of its units as Inclusionary Units.

(f)(4) Cash Payment. Where the total number of dwelling units proposed in the development will not exceed six units, the Applicant may make a cash payment equal to 3 percent of the sales price at closing of each unit as verified by the planning and development department or if rental housing, the cash payment shall be equal to 3 percent of the estimated, assessed value of each unit as determined by the city assessor, in lieu of Inclusionary Units as provided in section 30-24 (f)(3). Certificates of Occupancy for the property shall not be issued until the cash payment has been made as verified by the planning and development department. This payment shall be made to an inclusionary housing development fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for Eligible Households. The comptroller shall annually review payments to the fund and use of the proceeds and shall certify to the board of aldermen that proceeds have been used for the purposes stated herein.

(f)(5) Off-Site Development. Where an Applicant has entered into a development agreement with a non-profit housing development organization, Inclusionary Units otherwise required to be constructed on site and within the development may be constructed off-site, provided that special permits are granted contemporaneously for both developments. The Applicant and the non-profit housing development organization

must submit a development plan for off-site development for review and comment by the planning and development department prior to its submission to the board of aldermen. The plan must include at a minimum, demonstration of site control, the necessary financing in place to complete the off-site development, and construction specifications. The board of aldermen, in their consideration of the special permit for the off-site development, shall require in writing that the completion of the Inclusionary Units will occur no later than the completion of the Market Rate Units. If this does not occur, then the Applicant shall not receive certificates of occupancy for the Market Rate Units until such condition has been satisfied, as certified by the planning and development department and inspectional services.

(f)(6) Design and Construction. In all cases, Inclusionary Units shall be fully built out and finished dwelling units. Inclusionary Units provided on site must be dispersed throughout the development and must be sited in no less desirable locations than the Market Rate Units and have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of Market Rate Units in the development, and satisfy the following conditions:

- a) Inclusionary Units shall have habitable space of not less than 650 square feet for a one bedroom unit and an additional 300 square feet for each additional bedroom or 60 percent of the average square footage of the Market Rate Units with the same number of bedrooms, whichever is greater; provided that Inclusionary Units shall not exceed 2,000 square feet of habitable space;
- b) the bedroom mix of inclusionary units shall be equal to the bedroom mix of the Market Rate Units in the development. In the event that Market Rate Units are not finished with defined bedrooms, all Inclusionary Units shall have three bedrooms;
- c) the materials used and the quality of construction for Inclusionary Units, including heating, ventilation, and air conditioning systems, shall be equal to that of the Market Rate Units in the development, as reviewed by the planning and development department; provided that amenities such as so-called designer or high end appliances and fixtures need not be provided for Inclusionary Units.

(f)(7) Habitable Space Requirements. The total habitable space of Inclusionary Units in a proposed development shall not be less than 10 percent of the sum of the total habitable space of all Market Rate Units and all Inclusionary Units in the proposed development. As part of the application for a special permit under section 30-24(f), the Applicant shall submit a proposal including the calculation of habitable space for all Market Rate and Inclusionary Units to the planning and development department for its review and certification of compliance with this section as a condition to the grant of a special permit.

(f)(8) **Inclusionary Housing Plan and Covenants.** As part of the application for a special permit under section 30-24(f), the Applicant shall submit an inclusionary housing plan that shall be reviewed by the Newton Housing Authority and the planning and development department and certified as compliant by the planning and development department. The plan shall include the following provisions:

- a) a description of the Inclusionary Units including at a minimum, floor plans indicating the location of the Inclusionary Units, number of bedrooms per unit for all units in the development, square footage of each unit in the development, amenities to be provided, projected sales prices or rent levels for all units in the development, and an outline of construction specifications certified by the Applicant;
- b) a marketing and resident selection plan which includes an affirmative fair housing marketing program, including public notice and a disinterested resident selection process; provided that in the case of a marketing and selection plan for sale of Inclusionary Units to Eligible Households, the marketing and selection plan shall provide for "income blind" selection of Eligible Households and shall then provide for a preference order, to the extent permitted by law, first to City of Newton employees and then to residents of or workers in the City of Newton.
- c) agreement by the Applicant that residents will be selected at both initial sale and rental and all subsequent sales and rentals from a listing of Eligible Households in accordance with the marketing and resident selection plan developed, advertised, and maintained by the Newton Housing Authority; provided that the Applicant shall pay the reasonable costs of the Newton Housing Authority to develop, advertise, and maintain the listing of Eligible Households;
- d) agreement by the Applicant to develop, advertise, and provide a supplemental listing of Eligible Households to be used to the extent that Inclusionary Units are not fully subscribed from the Newton Housing Authority listing of Eligible Households;
- e) an agreement that the Applicant shall execute and record in the Middlesex Registry of Deeds, as a senior interest in the title prior to the granting of any building permits, a covenant that endures for the life of the residential development as follows:
 - (i) for purchase units, a covenant running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit initial sale and subsequent re-sales of Inclusionary Units to Eligible Households in accordance with provisions which incorporate sections 30-24(f)(1)b(ii), (f)(8)b), (f)(8)c), (f)(8)d), and (f)(8)e); and

- (ii) for rental units, a covenant running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit rental of Inclusionary Units to Eligible Households in accordance with provisions which incorporate sections 30-24(f)(1)b(i), (f)(8)b), (f)(8)c), (f)(8)d) and (f)(8)e);
- f) at the discretion of the Applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the city solicitor, to convey rental units to the Newton Housing Authority for sale or rental to Eligible Households; and
- g) in the case of rental housing, an agreement to submit an annual compliance report to the Newton Housing Authority, in a form approved by the city solicitor, certifying compliance with the provisions of section 30-24(f) of the zoning ordinances; provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton Housing Authority.

(f)(9) Public Funding Limitation. The intent of section 30-24(f) is that an Applicant is not to use public funds to construct Inclusionary Units required under this section; this provision however, is not intended to discourage the use of public funds to generate a greater number of affordable units than are otherwise required by this subsection. If the Applicant is a non-profit housing development organization and proposes housing that is entirely affordable to Eligible Households, they are exempt from the provisions of this sub-section.

(f)(10) Elder Housing with Services. In order to provide affordable elder housing with services on-site, the following requirements shall apply exclusively when an Applicant seeks a special permit for housing with services designed primarily for elders such as residential care, continuing care retirement communities, assisted living, independent living, and congregate care. The services to be provided shall be an integral part of the annual rent or occupancy related fee, shall be offered to all residents and may include in substantial measure long term health care and may include nursing, home health care, personal care, meals, transportation, convenience services, and social, cultural, and education programs. This section shall not apply to a nursing facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

- a) Maximum Contribution The Applicant shall contribute 2.5 percent of annual gross revenue from fees or charges for housing and all services, if it is a rental development or an equivalent economic value in the case of a non rental development. The amount of the contribution shall be determined by the director of planning and development, based on analysis of verified financial statements

and associated data provided by the Applicant as well as other data the director may deem relevant.

- b) Determination The board of aldermen shall determine, in its discretion, whether the contribution shall be residential units or beds or a cash payment after review of the recommendation of the director of planning and development. In considering the number of units or beds, the director may consider the level of services, government and private funding or support for housing and services, and the ability of low and moderate income individuals to contribute fees. The Applicant shall provide financial information requested by the director. If the petitioner or Applicant is making a cash contribution, the contribution shall be deposited in accordance with section 30-24(f)(4); provided that one half of the payment shall be made to the Newton Housing Authority, and one half of the payment shall be made to the inclusionary housing development fund established under section 30-24(f)(4).
- c) Contributed Units or Beds Contributed units or beds shall be made available to individuals and households whose incomes do not exceed 80 percent of the applicable median income for elders in the Boston Municipal Statistical Area, adjusted for household size.
- d) Selection The Applicant or manager shall select residents from a listing of eligible persons and households developed, advertised, and maintained by the Newton Housing Authority; provided that the Applicant shall pay the reasonable costs of the Newton Housing Authority to develop, advertise, and maintain the listing of eligible persons and households. Should the Applicant or manager be unable to fully subscribe the elder housing with services development from the Newton Housing Authority listing, the Applicant or manager shall recruit eligible persons and households through an outreach program approved by the director planning and development. The Applicant or manager shall certify its compliance with this section 30-24(f)(9) annually in a form and with such information as is required by the director of planning and development. To the extent permitted by law, Newton residents shall have first opportunity to participate in the elder housing with services program set out here.
- e) Residential Cash Balances If, after calculation of the number of units or beds to be contributed under this section 30-24(f), there remains an annual cash balance to be contributed, that amount shall be contributed as set out in subparagraph b) above. Any such contribution shall not reduce the contribution required in future years.
- (f)(11) Hotels. Whenever an application for a special permit seeks to increase the density of residential development for a hotel, the board of aldermen shall require a cash payment as a condition of any such grant. The amount of the payment shall be determined as 10 percent of the number of rooms in excess of that which existed on January 1, 1989 multiplied by the estimated per room valuation following construction,

as determined by the assessing department. Payment shall be made in accordance with section 30-24(f)(4); provided that one half of the payment shall be made to the Newton Housing Authority, and one half of the payment shall be made to the inclusionary housing development fund established under section 30-24(f)(4).

(f)(12) No Segmentation. An Applicant for residential development shall not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of this section 30-24(f). Where the board of aldermen determines that this provision has been violated, a special permit will be denied. However, nothing herein prohibits phased development of a property.

(f)(13) No Effect on Prior or Existing Obligations. This amendment to section 30-24(f) shall have no effect on any prior or currently effective special permit, obligation, contract, agreement, covenant or arrangement of any kind, executed or required to be executed, which provides for dwelling units to be made available for sale or rental to or by the City, the Newton Housing Authority, or other appropriate municipal agency, or any cash payment so required for affordable housing purposes, all resulting from a special permit under section 30-24(f) applied for or granted prior to the effective date of this amendment.

(f)(14) No Effect on Accessory Apartments. This section 30-24(f) shall not apply to accessory apartments regulated under sections 30-8(d) and 30-9(h).

(f)(15) Severability, effect on other laws. The provisions of section 30-24(f) are severable. If any subsection, provision, or portion of this section is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this section shall continue to be valid.

Approved as to legal form and character:

DANIEL M. FUNK
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted
22 yeas 0 nays 2 absent (Ald. Samuelson and Sangiolo)

EXECUTIVE DEPARTMENT
Approved: April 24, 2003

(SGD) EDWARD G. ENGLISH
City Clerk

(SGD) DAVID B. COHEN
Mayor

